COUNCIL OF THE EUROPEAN UNION

Brussels, 11 December 2002

14935/02

Interinstitutional File: 2001/0245 (COD)

ENV 718
MI 286
IND 96
ENER 298
CODEC 1565

INFORMATION NOTE

from :	General Secretariat
to :	Delegations
No. prev. doc. :	14537/3/02 REV 3 ENV 687 MI 263 IND 88 ENER 280 CODEC 1508
No. Cion props :	14394/01 ENV 395 MI 186 IND 33 ENER 184 CODEC 1238 – COM(2001) 581 final + COR 1 15002/02 ENV 725 MI 287 IND 97 ENER 300 CODEC 1574 – COM (2002) 680 final
Subject :	Amended proposal for a Directive of the European Parliament and of the Council establishing a scheme for greenhouse gas **emission allowance trading** within the Community and amending Council Directive 96/61/EC - Political agreement

Delegations will find attached the text of the political agreement on the abovementioned as agreed by the Council (Environment) on 9 December 2002.

ANNEX

Amended proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC

(Text with EEA relevance)

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive establishes a Community greenhouse gas emission allowance trading scheme in order to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner.*

Article 2

Scope

1. This Directive shall apply to emissions from the activities listed in Annex I and greenhouse gases listed in Annex II.

2. This Directive shall apply without prejudice to any requirements pursuant to Directive 96/61/EC.

* EP-amendment 15 to be slightly reworded and inserted at the end of recital 5 ("This Directive aims to contribute towards fulfilling the commitments of the EU and its Member States more effectively, through an efficient european market of greenhouse gas emission allowances, with the least possible diminution of economic development and employment.").

Article 3

Definitions

For the purposes of this Directive the following definitions shall apply:

(a) "allowance" means an allowance to emit one tonne of carbon dioxide equivalent during a specified period valid only for the purposes of meeting the requirements of this Directive and which is transferable in accordance with the provisions of this Directive;

(b) "emissions" means the release of greenhouse gases into the atmosphere from sources in an installation;

(c) "greenhouse gases" means the gases listed in Annex II;

(d) "greenhouse gas emissions permit" means the permit issued in accordance with Articles 5 and 6;

(e) "installation" means a stationary technical unit where one or more activities listed in Annex I are carried out and any other directly associated activities which have a technical connection with the activities carried out on that site and which could have an effect on emissions and pollution;

(f) "operator" means any person who operates or controls an installation or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of the installation has been delegated;

(g) "person" means any natural or legal person;

(h) "New entrant" means any installation carrying out one or more of the activities indicated in Annex I, which has obtained a greenhouse gas emissions permit or update of its greenhouse gas emissions permit due to a change in the nature or functioning or an extension of the installation, subsequent to the notification to the Commission of the national allocation plan;

(i) "the public" means one or more persons and, in accordance with national legislation or practice, associations, organisations or groups of persons;

(j) "tonne of carbon dioxide equivalent" means one metric tonne of carbon dioxide (CO_2) or an amount of any other greenhouse gas listed in Annex II with an equivalent global warming potential.

Article 4

Greenhouse gas emissions permits

Member States shall ensure that, from 1 January 2005, no installation undertakes any activity listed in Annex I resulting in emissions of a greenhouse gas specified in relation to that activity unless its operator holds a permit issued by a competent authority in accordance with Articles 5 and 6, or the installation is temporarily excluded from the Community greenhouse gas emissions trading scheme pursuant to Article 25(a).

Article 5

Applications for permits

An application to the competent authority for a greenhouse gas emissions permit shall include a description of:

(a) the installation and its activities including the technology used;

(b) the raw and auxiliary materials, the use of which is likely to lead to emissions of gases listed in Annex I;

(c) the sources of emissions of gases listed in Annex I from the installation; and

(d) the measures planned to monitor emissions in accordance with the guidelines adopted pursuant to Article 14.

The application shall also include a non-technical summary of the details referred to in the first paragraph.

Article 6

Conditions for and contents of the permit

1. The competent authority shall issue a greenhouse gas emissions permit granting authorisation to emit greenhouse gases from all or part of an installation if it is satisfied that the operator is capable of monitoring and reporting emissions.

   A permit may cover one or more installations on the same site operated by the same operator.

2. Greenhouse gas emissions permits shall contain the following:
   (a) the name and address of the operator;
   (b) a description of the activities and emissions from the installation;
   (c) monitoring requirements, specifying monitoring methodology and frequency;
   (d) reporting requirements; and
   (e) an obligation to surrender allowances equal to the total emissions of the installation in each calendar year, as verified in accordance with Article 15, within four months following the end of that year.

Article 7

Changes relating to installations

The operator shall inform the competent authority of any change planned in the nature or functioning, or an extension, of the installation which may require updating of the greenhouse gas emissions permit. Where appropriate, the competent authority shall update the permit. Where there is a change in the identity of the installation's operator, the competent authority shall update the permit to include the name and address of the new operator.

Article 8

Coordination with Directive 96/61/EC

Member States shall take the necessary measures to ensure that, where installations carry out activities that are included in Annex I to Directive 96/61/EC, the conditions of, and procedure for, the issue of a greenhouse gas emissions permit are coordinated with those for the permit provided for in that Directive. The requirements of Articles 5, 6 and 7 of this Directive may be integrated into the procedures provided for in Directive 96/61/EC.

Article 9

National allocation plan

1. For each period referred to in Article 11(1) and (2), each Member State shall develop a national plan stating the total quantity of allowances that it intends to allocate for that period and how it proposes to allocate them. The plan shall be based on objective and transparent criteria, including those listed in Annex III, taking due account of comments from the public. The Commission shall, without prejudice to the Treaty, by 31 December 2003 at the latest develop guidance on the implementation of the criteria listed in Annex III.

   For the period referred to in Article 11(1), the plan shall be published and notified to the Commission and to the other Member States by 31 March 2004 at the latest. For subsequent periods, the plan shall be published and notified to the Commission and to the other Member States at least eighteen months before the beginning of the relevant period.

2. National allocation plans shall be considered within the committee referred to in Article 23(1).

3. Within three months of notification of a national allocation plan by a Member State under paragraph 1, the Commission may reject that plan, or any aspect thereof, on the basis that it is incompatible with the criteria listed in Annex III or with Article 10. The Member State shall only take a decision under Article 11(1) or (2) if proposed amendments are accepted by the Commission. Reasons shall be given for any rejection decision by the Commission.

Article 10

Method of allocation

For the three-year period beginning 1 January 2005 Member States shall allocate allowances free of charge. For the five-year period beginning 1 January 2008, Member States shall allocate at least 90% of the allowances free of charge.

Article 11

Allocation and issue of allowances

1. For the three-year period beginning 1 January 2005, each Member State shall decide upon the total quantity of allowances it will allocate for that period and the allocation of those allowances to the operator of each installation. This decision shall be taken at least three months before the beginning of the period and be based on its national allocation plan developed pursuant to Article 9 and in accordance with Article 10, taking due account of comments from the public.

2. For the five-year period beginning 1 January 2008, and for each subsequent five-year period, each Member State shall decide upon the total quantity of allowances it will allocate for that period and initiate the process for the allocation of those allowances to the operator of each installation. This decision shall be taken at least twelve months before the beginning of the relevant period and be based on its national allocation plan developed pursuant to Article 9 and in accordance with Article 10, taking due account of comments from the public.

3. Decisions taken pursuant to paragraph 1 or 2 shall be in conformity with the requirements of the Treaty, in particular Articles 87 and 88 thereof. When deciding upon allocation, Member States shall take into account the need to provide access to allowances for new entrants.

4. The competent authority shall issue a proportion of the total quantity of allowances each year of the period referred to in paragraph 1 or 2, by 28 February of that year.

Article 12

Transfer, surrender and cancellation of allowances

1. Member States shall ensure that allowances can be transferred between
   (a) persons within the Community;
   (b) persons within the Community and persons in third countries recognised in accordance with the procedure in Article 24 without restrictions other than those contained in, or adopted pursuant to, this Directive.

2. Member States shall ensure that allowances issued by a competent authority of another Member State are recognised for the purpose of meeting an operator's obligations pursuant to paragraph 3. *

3. Member States shall ensure that, by 30 April each year at the latest, the operator of each installation surrenders a number of allowances equal to the total emissions from that installation during the preceding calendar year as verified in accordance with Article 15, and that these are subsequently cancelled.

4. Member States shall take the necessary steps to ensure that allowances will be cancelled at any time at the request of the person holding them.

* Introduction of new recital: "Whereas starting with the period referred to in Article 11 (2), transfers of allowances to another Member State shall involve corresponding adjustments of assigned amounts under the Kyoto Protocol,".

Article 13

Validity of allowances

1. Allowances shall be valid for emissions during the period referred to in Article 11(1) or (2) for which they are issued.

2. Four months after the beginning of the first five-year period referred to in Article 11(2), allowances which are no longer valid and have not been surrendered and cancelled in accordance with Article 12(3) shall be cancelled by the competent authority.

   Member States may* issue allowances to persons for the current period to replace any allowances held by them which are cancelled in accordance with the first subparagraph.

3. Four months after the beginning of each subsequent five-year period referred to in Article 11(2), allowances which are no longer valid and have not been surrendered and cancelled in accordance with Article 12(3) shall be cancelled by the competent authority.

   Member States shall issue allowances to persons for the current period to replace any allowances held by them which are cancelled in accordance with the first subparagraph.

* Introduction of new recital: "Whereas Member States may provide that they only issue allowances valid for the first five-year period referred to in Article 11(2) to persons in respect of allowances cancelled in accordance with Article 13(2), corresponding to emission reductions made by those persons on their national territory during the three year period referred to in Article 11(1)".

Article 14

Guidelines for monitoring and reporting of emissions

1. The Commission shall adopt guidelines for monitoring and reporting of emissions resulting from the activities listed in Annex I of greenhouse gases specified in relation to those activities, in accordance with the procedure referred to in Article 23(2), by 30 September 2003. The guidelines shall be based on the principles for monitoring and reporting set out in Annex IV.

2. Member States shall ensure that emissions are monitored in accordance with the guidelines.

3. Member States shall ensure that each operator of an installation reports the emissions from that installation during each calendar year to the competent authority after the end of that year in accordance with the guidelines.

Article 15

Verification

Member States shall ensure that the reports submitted by operators pursuant to Article 14(3) are verified in accordance with the criteria set out in Annex V, and that the competent authority is informed thereof.

Member States shall ensure that an operator whose report has not been verified as satisfactory in accordance with the criteria set out in Annex V by 31 March each year for emissions during the preceding year cannot make further transfers of allowances until a report from that operator has been verified as satisfactory.

Article 16

Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify these provisions to the Commission by 31 December 2003 at the latest, and shall notify it without delay of any subsequent amendment affecting them.

2. Member States shall ensure publication of the names of operators who are in breach of requirements to surrender sufficient allowances under Article 12(3).

3. Member States shall ensure that any operator which does not surrender sufficient allowances by 30 April of each year to cover its emissions during the preceding year shall be held liable for the payment of an excess emissions penalty. The excess emissions penalty shall be €100 for each tonne of carbon dioxide equivalent emitted by that installation for which the operator has not surrendered allowances. Payment of the excess emissions penalty shall not release the operator from the obligation to surrender an amount of allowances equal to those excess emissions when surrendering allowances in relation to the following calendar year.

4. During the three-year period beginning 1 January 2005, Member States shall apply a lower excess emissions penalty of € 40 for each tonne of carbon dioxide equivalent emitted by that installation for which the operator has not surrendered allowances. Payment of the excess emissions penalty shall not release the operator from the obligation to surrender an amount of allowances equal to those excess emissions when surrendering allowances in relation to the following calendar year.

Article 17

Access to information

Decisions relating to the allocation of allowances and the reports of emissions required under the greenhouse gas emissions permit and held by the competent authority shall be made available to the public by that authority subject to the restrictions laid down in Article 3(2) and (3) of Directive 90/313/EEC or equivalent, when entered into force.

Article 18

Competent authority

Member States shall make the appropriate administrative arrangements, including the designation of the appropriate competent authority or authorities, for the implementation of the rules of this Directive. Where more than one competent authority is designated, the work of these authorities pursuant to this Directive must be coordinated.

Article 19

Registries

1. Member States shall provide for the establishment and maintenance of a registry in order to ensure the accurate accounting of the issue, holding, transfer and cancellation of allowances. Member States may maintain their registries in a consolidated system, together with one or more other Member States.

2. Any person may hold allowances. The registry shall be accessible to the public and shall contain separate accounts to record the allowances held by each person to whom and from whom allowances are issued or transferred.

3. In order to implement this Directive, the Commission shall adopt a Regulation in accordance with the procedure referred to in Article 23(2) for a standardised and secured system of registries in the form of standardised electronic databases, containing common data elements to track the issue, holding, transfer and cancellation of allowances, to provide for public access and confidentiality as appropriate and to ensure that there are no transfers incompatible with obligations resulting from the Kyoto Protocol.

Article 20

Central Administrator

1. The Commission shall designate a Central Administrator to maintain an independent transaction log recording the issue, transfer and cancellation of allowances.

2. The Central Administrator shall conduct an automated check on each transaction in registries through the independent transaction log to ensure there are no irregularities in the issue, transfer and cancellation of allowances.

3. If irregularities are identified through the automated check, the Central Administrator shall inform the Member State or Member States concerned who shall not register the transactions in question or any further transactions relating to the allowances concerned until the irregularities have been resolved.

Article 21

Reporting by Member States

1. Each year the Member States shall submit to the Commission a report on the application of this Directive. This report shall pay particular attention to the arrangements for the allocation of allowances, the operation of registries, the application of the monitoring and reporting guidelines, verification and issues related to compliance with the Directive and on the fiscal treatment of allowances, if any. The first report shall be sent to the Commission by 30 June 2005. The report shall be drawn up on the basis of a questionnaire or outline drafted by the Commission in accordance with the procedure laid down in Article 6 of Directive 91/692/EEC. The questionnaire or outline shall be sent to Member States at least six months before the deadline for the submission of the first report.

2. Based on the reports referred to in paragraph 1 the Commission shall publish a report on the application of this Directive within three months of receiving the reports from the Member States.

3. The Commission shall organise an exchange of information between the competent authorities of the Member States concerning developments related to issues of allocation, the operation of registries, monitoring, reporting, verification and compliance.

Article 22

Amendments to Annex III

The Commission may amend Annex III for the period 2008-2012 in the light of the reports pursuant to Article 21 and experience of the application of this Directive, in accordance with the procedure referred to in Article 23(2).

Article 23

Committee

1. The Commission shall be assisted by the committee instituted by Article 8 of Decision 93/389/EEC.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

   The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedures.

Article 23(a)

Procedures for unilateral inclusion of additional activities and gases *

1. From 2008, Member States may apply emission allowance trading in accordance with the provisions laid down in this Directive to activities and installations which are not listed in Annex I and greenhouse gases listed in Annex II**,** provided that inclusion of such activities and installations is approved by the Commission in accordance with the procedure referred to in Article 23(2), taking into account all relevant criteria, in particular effects on the internal market, potential distortions of competition, the environmental integrity of the scheme and reliability of the planned monitoring and reporting system.

---

* Introduction of new recitals:
"Whereas the inclusion of installations in the EC greenhouse gas emissions trading scheme pursuant to Article 23(a) shall be in accordance with the provisions laid down in this Directive;" and
"Whereas the provisions of this Directive shall not prevent any Member State from maintaining or establishing national trading schemes regulating emissions of greenhouse gases from activities other than those listed in Annex I or included in the Community scheme under Article 23 (a) paragraph 1, or from installations temporarily excluded from the Community scheme pursuant to Article 25(a)."

From 2005 Member States may on the same conditions apply emissions allowance trading to installations carrying out activities listed in Annex I below the capacity limits referred to in the Annex.

2. Allocations made to installations carrying out such activities shall be specified under the national allocation plan referred to in Article 9.

3. The Commission may, on its own initiative, or shall, on request by a Member State, adopt monitoring and reporting guidelines for emissions from activities which are not listed in Annex I and greenhouse gases listed in Annex II in accordance with the procedure referred to in Article 23(2), if monitoring and reporting of these emissions can be done with sufficient accuracy.

4. In the event that such measures are introduced, reviews carried out pursuant to Article 26 shall also consider whether Annex I should be amended to include emissions from these activities in a harmonised way throughout the Community.

Article 24

Links with other greenhouse gas emissions trading schemes[*]

1. Agreements should be concluded with third countries listed in Annex B to the Kyoto Protocol which have ratified the Protocol to provide for the mutual recognition of allowances between the Community greenhouse gas emissions trading scheme and other greenhouse gas emissions trading schemes in accordance with the rules set out in Article 300 of the Treaty.

[*] Introduction of new recitals:
"Whereas, Member States can participate in international emissions trading as Parties to the Kyoto Protocol with any other Party included in Annex B thereto" and
"Whereas, linking the Community greenhouse gas emissions trading scheme to greenhouse gas emission trading schemes in third countries will increase the cost-effectiveness of achieving the Community emission reductions target as laid down in Council decision 2002/358/EC on the joint fulfilment of commitments".

2. Where an agreement referred to in paragraph 1 has been concluded, the Commission shall draw up any necessary provisions relating to the mutual recognition of allowances under that agreement in accordance with the procedure referred to in Article 23(2).

Article 25

Amendment of Directive 96/61/EC

In Article 9 (3) of Directive 96/61/EC the following subparagraphs are added:

"Where emissions of a greenhouse gas from an installation are specified in Annex I to Directive / /EC of the European Parliament and of the Council [establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC] in relation to an activity carried out in that installation, the permit shall not include an emission limit value for direct emissions of that gas unless it is necessary to ensure that no significant local pollution is caused.

For activities listed in Annex I of Directive / /EC Member States may choose not to impose requirements relating to energy efficiency in respect of combustion units or other units emitting carbon dioxide on the site.

Where necessary, the competent authorities shall amend the permit as appropriate.

The three preceding subparagraphs shall not apply to installations temporarily excluded from the Community greenhouse gas emissions trading scheme in accordance with Article 25 (a) of Directive / /EC.

---

* OJ L …"

Article 25(a)

Temporary exclusion of certain installations *

1. Member States may apply to the Commission for certain installations and activities to be temporarily excluded until 31 December 2007 at the latest from the Community greenhouse gas emissions trading scheme. Any such application shall list each such installation and shall be published.

2. If, having considered any comments made by the public on that application, the Commission decides in accordance with the procedure referred to in Article 23(2) that the installations and activities will:

   (a) as a result of national policies, limit their emissions as much as would be the case if they were subject to the provisions of this Directive;

   (b) be subject to monitoring, reporting and verification requirements which are equivalent to those provided for pursuant to Articles 14 and 15, and

   (c) be subject to penalties at least equivalent to those referred to in Article 16.1 and 16.4 in case of non-fulfilment of national requirements;

   it shall provide for the temporary exclusion of those installations from the Community greenhouse gas emissions trading scheme.

   It must be ensured that there will be no distortion of the internal market.

* "Whereas the instrument of taxation can be a national policy to limit emissions from installations temporarily excluded in accordance with Article 25(a);".

Article 25(b)

Pooling

1. Member States may allow operators of installations carrying out one of the activities listed in Annex I to form a pool of installations from the same activity for the period referred to in Article 11(1) and/or the first five-year period referred to in Article 11(2) in accordance with paragraphs (2) to (6).

2. Operators carrying out an activity listed in Annex I that wish to form a pool shall apply to the competent authority, specifying the installations and the period for which they want to pool and evidence that a trustee will be able to fulfil the obligations referred to in paragraphs (3) and (4).

3. Operators wanting to form a pool shall nominate a trustee:

   (a) to be issued the total quantity of allowances calculated by installation of the operators, by way of derogation from Article 11.
   (b) to be responsible for surrendering allowances equal to the total emissions from installations in the pool, by way of derogation from Articles 6(2)(e) and 12(3); and
   (c) to be restricted from making further transfers in the event that an operator's report has not been verified as satisfactory in accordance with the second paragraph of Article 15.

4. The trustee shall be subject to the penalties for breach of requirements to surrender sufficient allowances to cover the total emissions from installations in the pool, by way of derogation from Article 16(2), (3) and (4).

5. A Member State that wishes to allow one or more pools to be formed shall submit the application referred to in paragraph (2) to the Commission. Without prejudice to the Treaty, the Commission may within three months of receipt reject an application that does not fulfil the requirements of this Directive. Reasons shall be given for any such decision. In the case of rejection the Member State may only allow the pool to be formed if proposed amendments are accepted by the Commission.

6. In the event that the trustee fails to comply with penalties referred to in paragraph (4), each operator of an installation in the pool shall be responsible under Articles 12(3) and 16 in respect of emissions from its own installation.

Article 25 (c)

Force majeure

During the period referred to in Article 11(1), Member States may apply to the Commission for certain installations to be issued additional allowances on the basis of force majeure circumstances. The Commission shall determine whether force majeure is demonstrated, in which case it shall authorise the issuance of additional and non-transferable allowances by that Member State to the operators of those installations.

Article 26

Review and further development

1. Based on progress achieved in the monitoring of emissions of greenhouse gases, the Commission may make a proposal to the European Parliament and the Council by 31 December 2004 to amend Annex I to include other activities and emissions of other greenhouse gases listed in Annex II.

2. Based on experience of the application of this Directive and on progress achieved in the monitoring of emissions of greenhouse gases and in the light of developments in the international context, the Commission shall draw up a report on the application of this Directive, considering:

   (a) whether Annex I should be amended to include other activities and emissions of other greenhouse gases listed in Annex II, with a view to further improving the economic efficiency of the scheme;
   (b) the relationship of Community emission allowance trading with the international emission allowance trading that will start in 2008;

(c) further harmonisation of the method of allocation, and the criteria for national allocation plans referred to in Annex III;

(d) the use of credits from project mechanisms;

(e) the relationship of emissions trading with other policies and measures implemented at Member State and Community level, including taxation that pursue the same objectives;

(f) whether it is appropriate for there to be a single Community registry; and

(g) the level of excess emissions penalties, taking into account, inter alia, inflation;

(h) the functioning of the allowance market, covering in particular any possible market disturbances;

(i) how to adapt the trading scheme to an enlarged European Union;

(j) pooling.

The Commission shall submit this report to the European Parliament and the Council by 30 June 2006, accompanied by proposals as appropriate.

3. Linking the project-based mechanisms, including Joint Implementation (JI) and the Clean Development Mechanism (CDM) with the Community greenhouse gas emissions trading scheme is desirable [*] and important to achieve the goals of both the reduction of global greenhouse gas emissions and to increase the cost-effective functioning of the Community scheme. Therefore, the emission credits from the project-based mechanisms will be recognised for their use in this scheme subject to modalities adopted by the European Parliament and the Council on a proposal from the Commission, which should apply in parallel with the Community greenhouse gas emissions trading scheme in 2005.

[*] Introduction of new recital "Whereas, the recognition of credits from project-based mechanisms for fulfilling obligations under this Directive as from 2005 will increase the cost-effectiveness of achieving reductions of global greenhouse gas emissions and shall be provided for by a Directive for linking Project-based mechanisms including Joint Implementation (JI) and the Clean Development Mechanism (CDM) with the Community greenhouse emission trading scheme".

Article 27

Implementation

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [31 December 2003] at the latest. They shall forthwith inform the Commission thereof. The Commission shall notify the other Member States of those laws, regulations and administrative provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 28

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

CATEGORIES OF ACTIVITIES REFERRED TO IN ARTICLES 2(1), 3, 4, 14(1) AND 26

1. Installations or parts of installations used for research, development and testing of new products and processes are not covered by this Directive.

2. The threshold values given below generally refer to production capacities or outputs. Where one operator carries out several activities falling under the same subheading in the same installation or on the same site, the capacities of such activities are added together.

Activities	Greenhouse gases
Energy activities	
Combustion installations with a rated thermal input exceeding 20 MW (excepting hazardous or municipal waste installations)	Carbon dioxide
Mineral oil refineries	Carbon dioxide
Coke ovens	Carbon dioxide
Production and processing of ferrous metals	
Metal ore (including sulphide ore) roasting or sintering installations	Carbon dioxide
Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2.5 tonnes per hour	Carbon dioxide
Mineral industry	
Installations for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or lime in rotary kilns with a production capacity exceeding 50 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day	Carbon dioxide
Installations for the manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day	Carbon dioxide
Installations for the manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day, and/or with a kiln capacity exceeding 4 m^3 and with a setting density per kiln exceeding 300 kg/m^3	Carbon dioxide
Other activities	
Industrial plants for the production of (a) pulp from timber or other fibrous materials	Carbon dioxide
(b) paper and board with a production capacity exceeding 20 tonnes per day	Carbon dioxide

GREENHOUSE GASES REFERRED TO IN ARTICLES 3 AND 26

Carbon dioxide (CO_2)

Methane (CH_4)

Nitrous Oxide (N_2O)

Hydrofluorocarbons (HFCs)

Perfluorocarbons (PFCs)

Sulphur Hexafluoride (SF_6)

CRITERIA FOR NATIONAL ALLOCATION PLANS REFERRED TO IN ARTICLE 9

(1) The total quantity of allowances to be allocated for the relevant period shall be consistent with the Member State's obligation to limit its emissions pursuant to Decision / /EC and the Kyoto Protocol, taking into account the proportion of overall emissions that these represent in comparison with emissions from sources not covered by this Directive and national energy policies, and should be consistent with the national climate change programme.

(2) The total quantity of allowances to be allocated shall be consistent with assessments of actual and projected progress towards fulfilling the Member States' contributions to the Community's commitments made pursuant to Decision 93/389/EEC.

(3) Quantities of allowances to be allocated shall be consistent with the potential, including the technological potential, of activities covered by this scheme to reduce emissions. Member States may base their distribution of allowances on average emissions of greenhouse gases by product in each activity and achievable progress in each activity.

(4) The plan shall be consistent with other EC legislative and policy instruments. Account should be taken of unavoidable increases in emissions resulting from new legislative requirements.

(5) The plan shall not discriminate between companies or sectors in such a way as to unduly favour certain undertakings or activities in accordance with the requirements of the Treaty, in particular Articles 87 and 88 thereof.

(6) The plan shall contain information on the manner in which new entrants will be able to begin participating in the greenhouse gas emissions trading scheme in the Member State.

(7) The plan may accommodate early action and shall contain information on the manner in which early action is taken into account.

(7a) The plan shall contain information on the manner in which clean technology, including energy efficient technologies, are taken into account.

(8) The plan shall include provisions for comments to be expressed by the public, and contain information on the arrangements by which due account will be taken of these comments before a decision on the allocation of allowances is taken.

(8a) The plan shall contain a list of the installations covered by this Directive with the quantities of allowances intended to be allocated to each.

(9) The plan may contain information on the manner in which the existence of competition from countries/entities outside the EU will be taken into account.

_____

PRINCIPLES FOR MONITORING AND REPORTING REFERRED TO IN ARTICLE 14(1)

Monitoring of carbon dioxide emissions

Emissions shall be monitored either by calculation or on the basis of measurement.

Calculation

Calculations of emissions shall be performed using the formula:

Activity data x Emission factor x Oxidation factor

Activity data (fuel used, production rate etc) shall be monitored on the basis of supply data or measurement.

Accepted emission factors shall be used. Activity-specific emission factors are acceptable for all fuels. Default factors are acceptable for all fuels except non-commercial ones (waste fuels such as tyres and industrial process gases). Seam-specific defaults for coal, and EU-specific or producer country-specific defaults for natural gas shall be further elaborated. IPCC default values are acceptable for refinery products. The emission factor for biomass shall be zero.

If the emission factor does not take account of the fact that some of the carbon is not oxidised, then an additional oxidation factor shall be used. If activity-specific emission factors have been calculated and already take oxidation into account, then an oxidation factor need not be applied.

Default oxidation factors developed pursuant to Directive 96/61/EC shall be used, unless the operator can demonstrate that activity-specific factors are more accurate.

A separate calculation shall be made for each activity, installation and for each fuel.

Measurement

Measurement of emissions shall use standardised or accepted methods, and shall be corroborated by a supporting calculation of emissions.

Monitoring of emissions of other greenhouse gases

Standardised or accepted methods shall be used, developed by the Commission in collaboration with all relevant stakeholders and adopted in accordance with the procedure in Article 23 (2).

Reporting of emissions

Each operator shall include the following information in the report for an installation:

A. Data identifying the installation, including:

- Name of the installation;
- Its address, including postcode and country;
- Type and number of Annex I activities carried out in the installation;
- Address, telephone, fax and email details for a contact person; and
- Name of the owner of the installation, and of any parent company.

B. For each Annex I activity carried out on the site for which emissions are calculated:

- Activity data;
- Emission factors;
- Oxidation factors;
- Total emissions; and
- Uncertainty.

C. For each Annex I activity carried out on the site for which emissions are measured:

– Total emissions;
– Information on the reliability of measurement methods; and
– Uncertainty.

D. For emissions from combustion, the report shall also include the oxidation factor, unless oxidation has already been taken into account in the development of an activity-specific emission factor.

Member States shall take measures to coordinate reporting requirements with any existing reporting requirements in order to minimise the reporting burden on businesses.

CRITERIA FOR VERIFICATION REFERRED TO IN ARTICLE 15

General Principles

(1) Emissions from each activity listed in Annex I shall be subject to verification.

(2) The verification process shall include consideration of the report pursuant to Article 14(3) and of monitoring during the preceding year. It shall address the reliability, credibility and accuracy of monitoring systems and the reported data and information relating to emissions, in particular:

(a) the reported activity data and related measurements and calculations;
(b) the choice and the employment of emission factors;
(c) the calculations leading to the determination of the overall emissions; and
(d) if measurement is used, the appropriateness of the choice and the employment of measuring methods.

(3) Reported emissions may only be validated if reliable and credible data and information allow the emissions to be determined with a high degree of certainty. A high degree of certainty requires the operator to show that:

(a) the reported data is free of inconsistencies;
(b) the collection of the data has been carried out in accordance with the applicable scientific standards; and
(c) the relevant records of the installation are complete and consistent.

(4) The verifier shall be given access to all sites and information in relation to the subject of the verification.

(5) The verifier shall take into account whether the installation is registered under the Community eco-management and audit scheme (EMAS).

Methodology

Strategic analysis

(6) The verification shall be based on a strategic analysis of all the activities carried out in the installation. This requires the verifier to have an overview over all the activities and their significance for emissions.

Process analysis

(7) The verification of the submitted information shall, where appropriate, be carried out on the site of the installation. The verifier shall use spot-checks to determine the reliability of the reported data and information.

Risk analysis

(8) The verifier shall submit all the sources of greenhouse gas emissions in the installation to an evaluation with regard to the reliability of the data of each source contributing to the overall emissions of the installation.

(9) On the basis of this analysis the verifier shall explicitly identify those sources with a high risk of error and other aspects of the monitoring and reporting procedure which are likely to contribute to errors in the determination of the overall emissions. This especially involves the choice of the emission factors and the calculations necessary to determine the emissions of single sources of emissions. Particular attention shall be given to those sources with a high risk of error and those aspects of the monitoring procedure.

(10) The verifier shall take into consideration any effective risk control methods applied by the operator with a view to minimising the degree of uncertainty.

Report

(11) The verifier shall prepare a report on the validation process stating whether the report pursuant to Article 14(3) is satisfactory. This report shall specify all issues relevant to the work carried out. A statement that the report pursuant to Article 14(3) is satisfactory may be made if, in the opinion of the verifier, the total emissions are not materially misstated.

Minimum competency requirements for the verifier

(12) The verifier shall be independent of the operator, carry out his activities in a sound and objective professional manner, and understand:

(a) the provisions of this Directive, as well as relevant standards and guidance adopted by the Commission pursuant to Article 14(1);
(b) the legislative, regulatory, and administrative requirements relevant to the activities being verified; and
(c) the generation of all information related to each source of emissions in the installation, in particular, relating to the collection, measurement, calculation and reporting of data.